

The Christian News-Letter

Edited by
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5th September, 1945

DEAR MEMBER,

After two days' debate both Houses of Parliament have approved the ratification of the Charter of the United Nations. If we do not expect from the Charter an infallible guarantee of peace, which in the present state of the world no constitutional arrangements or agreements on paper can provide, but look on it as the first step in international organization and a powerful instrument, if the nations choose to use it, for the promotion of peace, co-operation and human welfare, we may find cause for thankfulness in the fact that fifty nations should have reached agreement about a document of such far-reaching scope.

THE CHARTER

The words of the Preamble are so significant that no excuse is needed for recording them in the files of the Christian News-Letter :—

“ We, the peoples of the United Nations, determined :
to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind and
to reaffirm faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom and for these ends—

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,
have resolved to combine our efforts to accomplish these aims.”

This declaration has no binding force ; it is merely an expression of intentions. But, as the Prime Minister pointed out, the Security Council is charged in Article 24 with acting in accordance

with the purposes and principles defined in Article 1, in which the declarations of the preamble are re-affirmed. Moreover, among the tasks specifically laid on the General Assembly in Article 13 is that of "promoting international co-operation in the economic, social, cultural and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

For the discharge of these functions the General Assembly is to establish an Economic and Social Council, which will in turn set up commissions in economic and social fields and for the promotion of human rights.

The possibilities which these provisions open up can hardly be over-stated, if there is faith and resolution to carry them into effect. Well might Mr. Bevin say that he would like to see them reproduced in a form in which they could be displayed in every Church, in every parish, in every hall, in every trade union branch and in all places where the public assembles, to remind people of their obligation to international law.

The Lord Chancellor, in the resolution approving the Charter, spoke of the new challenge to the unconquerable spirit of man presented by the atomic bomb and suggested that the very magnitude of the peril might enable the way of salvation to be found. Men must learn that only by co-operation could they hope to realize "the infinite possibilities, that lie in the human mind and soul."

With these sentiments Christians can heartily agree. But their assent depends on the honest facing of certain realities which the modern mind consistently ignores. Nearly all utterances of leaders of the western democracies throughout the war have been marked by what seems a too easy optimism, in which lies a real danger.

There *are* infinite possibilities in the human mind and soul. But every attempt to realize them will meet with renewed disappointment and frustration, unless it is also recognized that man's mind and soul are infected with a taint that can arrest and prevent their growth.

If the satanic enormity of evil and unbridled lawlessness against which we have been fighting have not opened our eyes to that truth, what can deliver us from our blindness? Because of our dislike of anything that wounds our self-esteem we try to evade the truth by confining the canker to the aggressor nations. It came to a head there, and consequently the war had to be fought. But the infection is in all of us. The wrongs for which we blame the Germans are still being perpetrated in Europe. America and Britain have produced and used a weapon which has destroyed at a single stroke the lives of tens of thousands of innocent children.

It is a lack of realism also to ignore the fact that there are many active and vigorous minds for which the declarations in the preamble of the Charter are just meaningless nonsense. Those who have read Rauschning's *Makers of Destruction*¹ will remember his account of the German technocrats, in whose view life is fundamentally a distribution and transformation of energy, and the end of man is to become the agent of these vast impersonal forces and bring about a complete rationalization of human existence with entire disregard of both individual preferences and moral considerations. If this seems a fantastic dream, we have to remember first, that it is only the logical conclusion of western materialist philosophy, still widely believed and taught, for which everything is ultimately explicable in terms of a single undifferentiated sub-stratum of matter or energy; and, secondly, the fascination which the view described can exercise over certain types of mind that have been formed by absorption in technical processes and have become intoxicated by the apparently limitless possibilities of technical advance. The strongest effort of the imagination is needed to enable those who, like most readers of the C.N.L., are outside the main stream of technical development to realize the effect on the mind of continuous association with manifestations of illimitable power which seem to reduce to insignificance every human value.

It is vain to make plans for a world order, if the convictions on which it must rest are being gradually eroded from the minds of men.

To face these realities of our situation, so far from daunting us in the task to which we are summoned by the Charter, may lead us to the true source of hope. Christians have surer ground to stand on than the intentions and determination of the United Nations, which are subject to the corroding influences that have been described and are liable to change. For Christians the purposes set forth in the Charter have their foundation in the will of God and His purpose in the creation of man.

The thing that needs to be firmly grasped at the moment is that the hopes which the Charter awakens may vanish unless vigorous action is taken *now*. Sir Arthur Salter, whose knowledge of these matters is unsurpassed, insisted in the debate that unless immediate steps are taken to prevent millions of people in Europe from freezing and starving in the coming winter a situation may be created which is beyond remedy. The political chaos which will certainly follow upon widespread famine would make the provisions of the Charter unworkable. The urgent need is that the resources of the armies, including the engineering skill at their disposal, should be set free to set the wheels of economic life on the continent in motion and, in particular, to set the coal mines working in the Ruhr. Shortage

¹ Eyre & Spottiswoode. 15s.

of coal may aggravate every other shortage, and produce a sinister snowball movement, accumulating disaster as it goes. But the opposite course is equally possible. Put in a little more meat for the miners and you produce more coal, and as a result more of everything you need, so that you have a beneficent snowball, accumulating benefit as it moves.

Those on whom rests responsibility to take far-reaching decisions in a situation of unprecedented difficulty need our constant prayers that they may act with imagination, promptness and energy comparable to that displayed in the war.

THE COHEN REPORT

The recently published report of the Committee presided over by Mr. Justice Cohen on the reform of Company Law¹ is a highly technical document, dealing with questions which at first sight lie outside the province of the Christian News-Letter. Its far-reaching recommendations for the prevention of abuses and for the provision of fuller information to enable those who invest money in a joint-stock company to know whether their funds are being properly and prudently used, have been well received by those qualified to judge.

But on a second view the report deals also with questions of a more fundamental kind, which are the proper concern of Christians, even if they are not experts on company law nor even in a modest way shareholders. The Cohen Committee find that much to which objection has been taken in the present arrangement of company finance arises not from any innate defect, but from a lack of personal responsibility. They offer recommendations with a view to making the economic system more responsible, but the particular responsibility with which they were concerned was that of directors to shareholders. Their object was to reform existing law within the present general framework of assumptions as to where the control of the operations of a joint-stock company should lie, i.e. with those who risk their money in it. But the question of responsibility is wider and deeper. The relations of power and responsibility in the economic system have been for some time past the subject of study by a group of the Christian Frontier Council.² One of the questions which has exercised their minds is whether present assumptions about ownership are not in fact the cause of much of the irresponsibility of modern business organization. This week's Supplement presents a further stage in this study. It was not written with an eye on the present proposals for the reform of company law, but it suggests that other more fundamental changes may be required.

Yours sincerely,



¹ Report of the Committee on Company Law Amendments. Cmd. 6659. H.M.S.O. 2s.

² Supplements to C.N.L. Nos. 190 and 204.

RESPONSIBILITY IN THE ECONOMIC SYSTEM—III

THE QUESTION OF OWNERSHIP

I. INTRODUCTION

The case for special Christian concern for the restoration of full responsibility to the economic system was put in a group paper printed as a Supplement to C.N.L. No. 190. Consequently, it needs no restatement here.

In several quarters, the reaction to this statement of the Christian case was that, obviously, there was a need for much more *state* control of industry than there had been before. The group therefore followed this up with another paper, printed as a Supplement to C.N.L. No. 204, in which the scope and limitations of state control were analysed. This analysis revealed that in practice there were definite limits to the use of an *external* measure like state control as a means of ensuring responsibility in the economic system, and concluded by expressing the view that that responsibility could not be achieved without *internal* changes in the organization of the industrial units themselves.

2. CONFLICT IN THE INDUSTRIAL ORDER

That was stated as a matter of general principle. But it is borne out over and over again when practical problems are considered. One has only to consider the possible consequences for our Full Employment Policy of a difference in objective between the Government and industry—the Government objective being to maintain jobs for all, and industry's objective being to make private profits or at least to maintain private solvency—a difference that would inevitably spell conflict, with the almost certain likelihood of industry supporting the Government's employment policy only as long as doing so was furthering its own objective.

Not that conflict is of itself harmful. Competition may be healthy and stimulating, as when it amounts to mutual rivalry (for whatever immediate motive) to achieve ends which may be socially beneficial. But conflict resulting from divergence of aim between bodies working at different levels, whose aims should be co-ordinated, is quite another matter.

If the objective of public policy is to be achieved, there must inevitably be interference with the normal objectives of industrial firms. Take the following example. At the present time, no less

than half the firms in one particular industry are actively planning reconstruction of their factories, and the installation of modern machinery and equipment. Yet if stable and full employment is to be maintained, if consumers are to have their arrears of war-time demand satisfied without undue delay, and if the constructional industry is not to go through a period of intense boom followed by intense slump, some—in fact, considerable—regulation of this modernization programme will be necessary. It must be spread over, and timed, to fit in with the general interests of society. But any interference with the liberty of the individual firms to proceed with reconstruction as soon as possible—or at whatever time they, and not society, think best—will inevitably interfere seriously with their relative profitability and competitive position. If A's scheme is allowed to go forward, and B's is not, then A reaps a considerable financial advantage by being early in the field with his more modern methods. Is it right that B should be penalized, and A favoured, not by reason of their relative merits or demerits, but simply for the sake of the general convenience? Yet arbitrary interference with profit rights, or profit expectations, is inevitable—unless we admit that profit rights take precedence, and that full employment or any other objective of state policy may have to go by the board.

Admittedly, it may be dangerous to draw general conclusions from economic situations that arise from a world upheaval like the war. But it is not only war that produces abnormal situations. Crises of varying degrees of intensity are frequent occurrences in modern industry, as when a major scientific discovery dislocates a whole trade or area—not to mention the fact of mass unemployment between the wars. In all these cases, state action may be needed which may easily be stultified if individual profit rights cannot be upset or modified, temporarily or even permanently. It is true, of course, that during the war (and in post-war plans for at least one important industry) the attempt is being made to meet legitimate state interference of this kind by financial compensation. However, it is doubtful whether compensation is ever likely to be more than a palliative; it would not appear to get at the root of the problem, and a policy of compensation, if regularly adopted, would merely put a premium on social irresponsibility in industry.

Now, why is it that many people regard interference with profit rights as something to be resisted as a matter of principle? Their attitude follows logically from the attitude of contemporary society towards the ownership of property, which is that ownership gives the owner the right to any benefit he can extract from that property. Consequently, the shareholder in a company is held to be entitled to whatever profit accrues to his benefit as a result of trading operations. In addition, the protection of property rights

is regarded as a bulwark of freedom against the arrival of a totalitarian state. Thus, it is from the need to protect individual *property rights*, that there springs the need, and the justification, of resisting any interference with *profit rights*.

Thus, the question of ownership is at the very centre of the problem we have to face. Confirmation of this view finds expression in current political controversy : nationalization *v.* private enterprise. But to pose the question in that way is a gross oversimplification.

3. THE ADVENT OF THE LIMITED COMPANY

The traditional teaching of the Christian Church on the private ownership of property has been clearly stated elsewhere by the late Dr. Temple.¹ Briefly, however, it may be said that ownership (if it is to be justified in the Christian view) should be personal in character, since otherwise there can be no individual responsibility, that it should not be regarded as absolute in any way, but rather as the stewardship of life-tenancy of a part of God's creation ; and that the rights attaching to it should not be those of private use or exclusive enjoyment or benefit, but those of administration and distribution.

Contrast with this the position of the shareholder in a limited liability company.

Because of the expansion in the size of industrial undertakings which came about in the second half of the nineteenth century, it became necessary for businesses to own more property and equipment than an individual and his family usually possessed. For this purpose it was necessary to raise capital from as wide a field as possible ; and the difficulty of inducing people to lend money to those whom they did not know and trust was overcome by the passing of the Limited Liability Act in 1855, which limited their liability in the event of failure to the amount they had already contributed or had agreed to contribute.

At the time it was thought that we were doing no more than broadening the basis of ownership—that, in other words, we were enabling (say) five hundred or a thousand people, who did not know each other, jointly to own property which previously would have been owned, in smaller lots, by individuals. Unthinkingly, we transferred all our ideas about ownership to this new form of business undertaking, with its amorphous body of shareholders.

Chairmen of companies, in addressing the shareholders at Annual General Meetings, refer to themselves as “*your directors*”

¹ *Christianity and the Social Order*. Penguin Special.

and to the company as "*your company*"—as though the shareholders owned it. But, in point of fact, when we say that a company is the property of, and is owned by its shareholders, we mean no more—in effect if not in original intention—than that they have the right (a) to consent to the appointment of directors to manage the business, and (b) to receive the cash surplus which results from trading. And they have no responsibilities whatever, once the money they have agreed to contribute has been subscribed—even the right to consent at the "election" of directors being a passive act and an ineffective responsibility.

It is difficult to see how, on any view, these rights of the shareholder can be regarded as property rights, since they do not give him effective control of his property. They are certainly not property rights which might appear justifiable to the Christian. For the shareholder has no responsibility for the property of the company nor for those who are employed in it. He has not even the right to work in it. A shareholding does not convey a right to the personal ownership of the property: that is merely financial in character. Moreover, it does not convey a right to administer nor a duty to care for property, but merely a right to participate in a cash surplus.

A shareholder is, in fact if not in law, a creditor—though a creditor with a special function to perform in the industrial order, as we shall see later.

4. A NEW SOCIAL ORGANISM

So, too, a company is not, in fact, the possession of its shareholders but a human association—a company of human beings that work in it. We had not realized that, once businesses had reached the stage in which they were no longer personal, and once we reduced the providers of capital to mere creditors by introducing the principle of limited liability, we had begun to create something entirely new.

Here was a social organism—a legal framework within which people could combine to carry out co-operatively a social task, only the legal framework (as we have seen) was twisted and distorted by a misconception as to the correct order of precedence, the shareholder being given a far more prominent place than was ever justified.

As a social organism, a company is not something tangible which can be owned or possessed, any more than, say, the Institute of Chartered Accountants or the Port of London Authority can be owned or possessed. It can itself own property, because legislation

has made it a legal entity capable of doing so ; but the company, the legal entity, is not property, and is incapable of being owned.

From the point of view of seeking to achieve responsibility in the economic system, it may seriously be questioned whether, until that fact is recognized, it is not largely a waste of time reforming the Company Law—a law which is framed almost entirely in terms of protecting the financial interests of the shareholder. If we are ever to achieve our aim, that law should be framed so as to give legal recognition to this “ human association which in fact produces and distributes wealth, the association of workmen, managers, technicians and directors. . . . We have to give law to the real association, and to withdraw meaningless privilege from the imaginary one. . . . Here is the most urgent challenge to political invention ever offered to the jurist and the statesman.”¹

What needs to be done is to re-cast the whole of Company Law so that limited companies are legally recognized as the social organisms they really are, and to alter the whole code of rules and regulations around that main assertion. This involves thinking out afresh the basis of power, and the directives, for the higher control in each of these organisms.

5. THE SOURCE OF POWER

At present the source of power in a limited company is the shareholders—or, rather, those shareholders whose shares carry voting rights. Directors are appointed by them and derive authority from the fact of caring for their interests. However formal the act of appointment and however wavering the care, that is the basis of directors’ power. If it comes to it, the shareholders can always change their board—not that they do very often, but the means are there if they want to use them.

Now why should directors derive all their power and authority from the fact that they represent the interests of shareholders ? First, of course, there is the argument (which we have sought to examine) that shareholders, having put up the necessary money to enable the company to operate, thereby own the company ; it is their property ; consequently, what they say, or what their representatives say, has to go. But that in our opinion is a false view. It is not their property. Shareholders are merely one of several groups of people who, each in their different ways, go to make up a company.

However, there is still a second reason which might warrant the peculiar position of shareholders as the source of power in

¹ Lord Eustace Percy, *The Unknown State*. O.U.P. 1944.

limited companies. In any commercial or industrial enterprise, the management make a series of contracts in anticipation of what they expect to happen. They agree to pay staff and workpeople for the work they do, suppliers for the materials they supply or the services they render, and so on ; on the other side, they expect to receive payment from customers for goods sold. All these contracts and expectations have inevitably to be expressed in terms of money. But they never turn out quite as expected, even in the best businesses. There is always a difference one way or the other, a surplus or a deficit, and it is the function of the shareholder to act as a shock-absorber and take up the jolts to the economic system these differences would otherwise cause.

6. WHO STANDS THE LOSS ?

Much is heard of the shareholder's profits, but the real purpose he serves is to stand the losses of industrial enterprise. His function is to lose his money when things turn out badly, in return for which he gets the surplus when things turn out well. Admittedly, his representatives often take good care to see that workpeople lose their jobs before he loses his money. But that is so only because workpeople have little or no security in employment—a state of affairs which in part can be remedied by legislation and should not be allowed to obscure the fact that it is the shareholder's part in the system to carry the money losses.

Those who argue against private ownership either overlook this vitally important role played by private shareholders, or assume without question that it could be taken over by the state. But the difficulty is that the state is very bad at suffering losses, though good at taking profits. Civil servants regard themselves (rightly and properly) as trustees for the taxpayers' money, which they feel they cannot spend in paying for the losses of industrial enterprise without a lot of questioning and a good deal of misgiving. They do not readily put their hands in the taxpayers' pockets and pay up cheerfully. Yet the shareholder, having ventured his stake in the industrial game, is prepared to lose it if need be. Moreover, experience suggests that it is only in this way that all sorts of ideas can be freely tried out—the good, the bad, and the indifferent alike—and a gradual sifting of them take place. And often it is not at all easy to know whether ideas are good or bad until they have actually been tried.

The system worked fairly well in times when large numbers of shareholders were losing their money all the time. The menace of the situation which has been growing up in England in the last few

decades is, on the one hand, the insistence of shareholders on a sort of security *cum* perpetuity, which they seek to achieve through investment trusts and similar institutions ; and, on the other hand, the tendency of industrial organizations to emerge which indulge this fancy of the modern shareholder by paying steady dividends on the ordinary capital, the directors knowing that as long as they do so they will be free from effective criticism by those who appointed them. In both cases, the shareholders no longer perform their proper function in the industrial system.

As long as he performs that function, however, the shareholder is entitled to certain rewards, just as others who contribute to the making up of a company (such as the management and the work-people) are entitled to rewards proportionate to the services they render. When he stands to lose his stake if things turn out ill, he is entitled to more than the normal return on gilt-edged or safe investments when things turn out well ; and how much more is fair is a matter that is capable of rough assessment according to the circumstances of each case. But there is no obvious reason why the fact that he is entitled under the terms of his contract with the other groups of people making up the company to a variable rate of interest for the use of his money—there is no obvious reason why that fact should give his group, and only his group, the right to appoint the people who direct and manage the human association we call a company. There is no obvious reason, in fact, why power should only be derived from his group.

Nevertheless, it will be said that the derivation of power from shareholders is a very convenient arrangement which it would be a pity to disturb. After all, power and authority have to be derived from some source or other ; and, even if it is not used very effectively, the frequent device is both convenient and familiar. But there is far more at stake than mere convenience. The method of appointment and the direction of accountability unconsciously affect the outlook of the higher control in companies, and give a bias to their actions. More important still, the fact that directors are accountable only to shareholders inevitably means that the test of success applied to industrial undertakings is a financial test ; it is not whether the needs of consumers have been met, nor whether those who meet those needs have lived and worked under good conditions and in good surroundings, but whether the business has done well for the shareholder. And that, as was shown in our first Supplement, has led in practice to marked irresponsibility.

7. CONCLUSION

The position we have reached, then, is this. Companies are not owned by their shareholders, in any meaning of the word "owned" which appears justifiable according to the traditional Christian view of property. Companies cannot be owned at all; they are, rather, human associations comprising men and women come together to carry out co-operatively certain social tasks.

This conclusion, however, does not solve the problem of social irresponsibility in the economic system. A company regarded as, and regarding itself as, an association of human beings can equally develop its own forms of irresponsibility.

We have, however, attempted to show that that part of economic irresponsibility which is traceable to the presumed ownership of companies by their shareholders can be tackled. There is no brick wall there, blocking our path. For the shareholder is not entitled to consideration by virtue of his supposed ownership of these human associations. But he cannot be dispensed with, as many advocates of nationalization appear to believe. There is an essential function in the economic system which he has to perform, and that is to stand the loss when things go wrong.

Now in any human association there must be a principle of power. From what has been said above, the principle of the derivation of power from shareholders as supposed owners falls to the ground. On what principle, then, is power to be derived and held accountable? And what test of success is to be applied in judging its exercise?

An attempt will be made to answer these and other questions derived from them in a later Supplement.

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